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S E C R E T SECTION 01 OF 02 YEREVAN 002140

SIPDIS

NOFORN

E.O. 12958: DECL: 09/28/2014

TAGS: [KNNP](#) [MNUC](#) [PARM](#) [PREL](#) [AM](#) [GG](#)

SUBJECT: CASE AGAINST URANIUM SMUGGLER IN DANGER OF  
DISMISSAL

Classified By: CDA A.F.Godfrey for reasons 1.4 (b,d)

Summary and Action Request

1. (S/NF) Garik Dadayan was detained on the Georgia - Armenia border while attempting to smuggle Highly Enriched Uranium (HEU) in June 2003. Dadayan has been in pre-trial detention in Armenia, but his case is now moving to trial. Prosecutors and the judge presiding in the case are concerned that glaring procedural errors, a broken chain of evidence and the inability to bring Georgian witnesses to an Armenian court could lead to the dismissal of Dadayan's case. We underscored our intense interest in this case and asked that the GOAM take all appropriate steps to ensure that Dadayan is not acquitted on a technicality.

2. (S/NF) USG engagement in this case could be important to a successful outcome. Dadayan's next hearing is scheduled for October 18. The Armenian court is preparing requests to the Georgian Ministry of Justice for assistance in ensuring witnesses are present. We may need to underscore to the GOG our interest that these requests be honored. We understand the U.S. Department of Energy would be willing to produce a detailed analysis of the seized material (which is now in USG custody); this would be welcome. Any assistance we could provide in tracing the material to Dadayan would be very helpful in securing a guilty verdict. End Summary and Action Request.

Highly Enriched Uranium Seized on the Border

3. (S/NF) Garik Dadayan, an Armenian citizen, was detained on June 26, 2003 at the state border between Georgia and Armenia. His detention was the result of cooperation between intelligence services. Dadayan was found to be in possession of small amounts of substances which were later determined (by the USG) to be highly enriched uranium. This substance was provided to the U.S. Embassy in Tbilisi on August 23, 2003 in two small packages of powder, one of 95 grams and one of 75 grams. Although Dadayan has been in GOAM custody for over a year, his case is only now moving to trial.

4. (S/NF) Post used the opportunity of a visit from Washington of an attorney-adviser to become familiar with the current status of the case. On September 13, DCM met with Nuatsakan Sagsian, Deputy Prosecutor General, Vrezh Simonian, Senior Prosecutor of the Investigative Department, and Samvel Mnatsakanian, the Prosecutor most directly involved in preparing the case for trial. On September 14, we met with Judge Suren Lalayan, who is the presiding judge for this case in the Yerevan Center Court of the First Instance.

Prosecution's Case in Trouble

5. (S/NF) The Prosecutors stated that the case was in serious trouble. First, there were significant procedural errors during the period immediately following Dadayan's arrest by the Georgian authorities. Paperwork about the arrest was completed after the fact and away from the place of arrest. The "chain of evidence" had been broken several times. Descriptions of the items seized with Dadayan vary significantly in different documents now part of the official case file. Second, prosecutors had not been able to produce witnesses to Dadayan's arrest in court; while CIS legal cooperation agreements exist, they are rarely complied with. Prosecutors doubt that they will be able to compel witnesses from Georgia to appear in an Armenian court. "Dadayan is denying everything," they said, and has submitted a motion to have the case dismissed.

Help Needed to Produce Georgian Witnesses in Armenian Court

6. (S/NF) We urged the Prosecutors to redouble their efforts to convince witnesses from Georgia to appear in court. While we could guarantee no results, we would be pleased to ask our colleagues in Tbilisi to engage with the GOG to encourage Georgian witnesses to appear in court. The Prosecutors demurred, saying that the case is now with the court, and the prosecutor has no role in the conduct of the case.

## Judge Shares Case File

17. (S/NF) During the September 14 meeting with the trial judge, we found a more cooperative attitude than with the prosecutors, but similarly discouraging results. Judge Lalayan described the same set of problems with documentation of the arrest, custody of evidence and with securing witnesses' presence in court. Because the USG is not a party to the case, Lalayan said that it was unlawful for him to provide us with copies of either the case file or Dadayan's appeal for dismissal. He willingly showed us the file, however, and allowed us to make notes. He also read key points of Dadayan's motion for dismissal.

## USG Documents Weaken Case Against Dadayan

18. (S/NF) Lalayan said that circumstances regarding custody of the evidence in question, including how the evidence came to be in the custody of the USG, would need to be made clear to the court. The case file (which Lalayan showed us) contains correspondence ostensibly from the U.S. Embassy in Tbilisi which calls into question whether the substance seized from Dadayan was radioactive at all. Lalayan showed us a letter dated September 12 2003, unsigned, printed in all capital letters on U.S. Embassy letterhead, which stated that the sample in question was harmless "Red Mercury" and similar to material seized in scams in other parts of the world. A second letter, dated February 10, 2004, also unsigned and also on U.S. Embassy letterhead stated that the sample received was in fact radioactive and a small portion of that sample was being returned to the Government of Georgia for analysis.

19. (S/NF) Lalayan welcomed our assertions that the sample was actually highly enriched uranium. He appreciated our readiness to provide an analysis of the seized material in a form which would be acceptable to the court. He said that it was unlikely that the court would require the physical presence of the HEU in the courtroom. We noted that some degree of confusion regarding documentation of Dadayan's arrest should be understandable by the court; we expressed our hope that any decision by the court would not discourage further intelligence cooperation.

## Comment

10. (S/NF) The Dadayan case is in danger of dismissal, although our pressure on the Court and prosecutors may have forestalled this outcome for the time being. If we want a guilty verdict, we will need to provide some assistance to overcome the procedural foul-ups at the beginning of the case. In order to negate the impact of the amateurish-looking September 12 "Red Mercury" letter in the case file, we will need to provide a professional analysis of the material provided. (Note: Judge Lalayan provided a list of criteria during the meeting. End Note.) It may prove to be a more difficult task to convince witnesses from Georgia to appear in an Armenian court, particularly if they are associated with intelligence operations. The toughest task will be to convince a court that the chain of evidence was not broken and that the material we analyzed is in fact the material seized with Dadayan. The defense attorneys evidently are aware of this and are waiting to poke holes in the prosecution's case.

EVANS